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DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

*Protest Alleging Responsibility Determination of Awardee*  
*Defective*

FILE: B-199416.2

DATE: January 19, 1981

MATTER OF: Aul Instruments, Inc.

DIGEST:

CNG 91381

1. Competitor's objection to bid price as too low provides no legal basis for precluding contract award to low bidder.
2. As "domestic end product" is one made in United States if cost of its components mined, produced or manufactured in United States exceeds 50 percent of cost of all components, signed Buy American Certificate with no exceptions is not necessarily inconsistent with another provision in bid which indicates bid item contains foreign component which is one percent of item price.
3. Bid is responsive even though bidder checked boxes next to statements in "Use of Government Production and Research Property" clause that it will not use such property and if such property is used it should be rent-free as this was minor informality or irregularity which had no effect upon price or competitive standing.
4. Evidence of authority of signer of bid to bind company may be presented after bid opening.
5. There is no legal basis to object to agency's intent to request delivery acceleration at no increase in contract price after contract award, when agency also intends to abide by delivery schedule specified in specification if awardee refuses such acceleration.

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Aul Instruments, Inc. protests the award of a contract for calibration standard sets to Ridge Instrument Company by the U.S. Army Missile Command, Redstone Arsenal, Alabama under invitation for bids No. DAAH01-80-B-0332. The bids were opened on July 28, 1980 and Ridge was the low bidder. Aul filed its protest with this Office on August 26 and on August 29, the Army made award to Ridge notwithstanding this protest.

(Aul contends Ridge's bid should have been rejected because Aul's analysis indicates Ridge will suffer a substantial loss in the performance of this contract and therefore, the determination of responsibility by the agency must be defective.) (Aul also objects to inconsistencies in Ridge's bid such as that firm's certifying that no Government furnished property would be required while proposing rent-free use of such property and its execution of the IFB's Buy American Certificate without exceptions although the bid also indicated one percent foreign content in the supplies to be delivered.) (Aul further contends the Ridge bid was not signed by an officer of the company but by a contract coordinator whose authority to bind the company was not on file with the agency or submitted with the bid and states that the agency failed to amend the solicitation even though it knew that the delivery schedule had to be accelerated.)

(We have repeatedly held that the submission of a bid which a competitor considers too low does not constitute a legal basis for precluding a contract award.) Columbia Loose-Leaf Corporation, B-193659, January 23, 1979, 79-1 CPD 45. (Moreover, the rejection of a bid as unrealistically low requires a determination that the bidder is nonresponsible.) Eutronics Industries, Inc., B-185896, March 10, 1976, 76-1 CPD 169. (Here, the agency made an affirmative determination with respect to Ridge's responsibility and Aul's protest in essence challenges this determination. This Office no longer reviews such determinations unless fraud is shown on the part of procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been met.) Consolidated Elevator Company, B-190929, March 3, 1978, 78-1 CPD 166. Neither exception is present in this case. Therefore, Aul's contentions on this matter will not be further considered.

We see no inconsistency in Ridge certifying that each end product delivered would be domestic while indicating in the "Percent Foreign Content" clause included in the IFB pursuant to Defense Acquisition Regulation (DAR) § 7-2003.81 (DPC 76-18, March 12, 1979) that approximately one percent of the proposed contract price represents foreign content or effort. DAR § 6-001.1(c) (DAC 76-25, October 31, 1980) defines "domestic end product" as one in which the cost of its components which are mined, produced or manufactured in the United States exceeds 50 percent of the cost of all of its components. Therefore, under the Buy American Certificate in DAR § 7-2003.47 (DAC 76-25, October 31, 1980), an end product which includes components whose cost is 50 percent of the total cost of the item would be considered a domestic end product. Thus, while it may be theoretically possible for one percent of the contract price to exceed 50 percent of the cost of one of the end products, there is no indication here that the cost of one component of Canadian origin approaches 50 percent of the cost of either the calibration set or the consoles which are the only two end products to be delivered.)

(In the IFB clause entitled "Use of Government Production and Research Property" Ridge checked boxes both by the first statement that it " \* \* \* will not use Government production and research property in performance under this proposed procurement" and the second statement that "if use of Government production and research property is proposed, offeror or his subcontractor \* \* \* proposes rent-free use." Aul contends that these statements are inconsistent and caused Ridge's bid to be nonresponsive. Ridge denies any inconsistency and states its reference to rent-free use of property refers only to the possibility that such use might occur in the future.

By its terms, the provision pertaining to rent-free use of Government property applies only "if use of Government production and research property is proposed." It is clear Ridge overlooked this condition and should not have checked the box by the second statement after having indicated that no Government property would be used. However, when read with the initial provision, the rent-free use proposal can have no effect. Thus, as the proposal for rent-free use had no effect upon Ridge's price or competitive standing,

we see no prejudice to Aul's interest by the Army's determination that it was a minor informality or irregularity which could be waived.

Regarding Aul's contention that the Ridge bid should be rejected because it was not signed by an authorized representative of the company, (the record shows Ridge's bid was signed by a contract coordinator whose authority to bind the company was not on file with the Army and did not accompany the bid. However, the contract coordinator had been signing bids and proposals for Ridge for several years and there was in the Army's records an unsigned document purporting to authorize the contract coordinator to bind the company.) After bid opening, the president of Ridge confirmed in writing the authority of the signer of the bid.

Aul cites Forest Scientific, Inc., B-192827, B-192796, B-193062, February 9, 1979, 79-1 CPD 183 in support of its position that the burden is on each bidder to establish the authority of the signer of the bid. We agree with this position. However, the case also states that evidence to establish such authority may be presented after bid opening. Similar holdings can be found in Self-Powered Lighting, Ltd, B-195935, March 13, 1980, 80-1 CPD 195; F & H Manufacturing Corporation, B-196161, February 7, 1980, 80-1 CPD 105; and Spectrolab, a Division of Textron, Inc., B-180008, June 12, 1974, 74-1 CPD 321. In view of these cases and the circumstances here, we have no basis for questioning the Army's acceptance after bid opening of evidence of the signer's authority.

(The protester contends that the Army knew at the time of bid opening the delivery schedule would have to be accelerated. Aul states that the Army should have extended the bid opening date and amended the IFB to reflect the agency's actual delivery needs.) Aul argues that if it had known of the desire for earlier delivery, it could have bid a lower price by buying components in larger quantities and engaging more assembly personnel. It contends the negotiation of such an acceleration with Ridge would be a "bailout" from a loss contract.

The Army concedes it wished for earlier delivery but denies it intended to increase the contract price in order to get it. It states the specified delivery schedule was realistic and that the imposition of a earlier schedule might have been unreasonable and unduly restrictive of competition. The Army points out there was no restriction in the solicitation preventing early delivery and that matters concerning changes in delivery are matters of contract administration which are not for resolution under GAO Bid Protest Procedures.

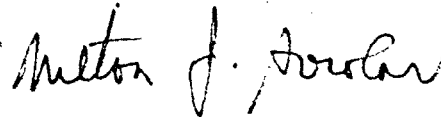
Contract changes, amendments and modifications are matters of contract administration within the authority and responsibility of the procuring agency and issues with regard to them are generally not for resolution under our bid protest function. Symbolic Displays, Incorporated, B-182847, May 6, 1975, 75-1 CPD 278. Our Office will, however, review protests concerning such changes if it is alleged that at the time of award the agency intended to make such changes after award. See A & J Manufacturing Company, 53 Comp. Gen. 838 (1974), 74-1 CPD 240.

The record clearly shows the Army's intention to request that the awardee accelerate deliveries at no increase in contract price but to abide by the specified delivery schedule if the awardee refused. Thus, (we know of no basis on which we could object to the Army's desire or request and we see no prejudice to the competition if Ridge accommodates the Army by delivering early without an increase in price. Such an accommodation would not change the price, the competitive standings of the bidders or the equipment to be delivered.) We therefore do not see how Aul was prejudiced by the Army's failure to amend the solicitation to provide for earlier delivery and extend the bid opening date.

Finally, Aul complains that the award of the contract while the protest was pending was improper because the agency only stated the equipment was needed "as soon as possible" instead of "immediately." Aul also notes that the agency did not provide for a waiver of first article testing which the protester argues is inconsistent with

an urgent need for the items. Aul's allegations provide us no basis on which to question the agency's determination to award the contract on the basis of urgency as authorized by DAR § 2-407.8(b)(3) (1976 ed.). Moreover, even if the award was contrary to DAR § 2-407.8(b)(3), its legality would not be affected. See SAI Comsystems Corporation, B-196163, February 6, 1980, 80-1 CPD 100.

The protest is denied.

A handwritten signature in dark ink, appearing to read "Milton J. Fowler". The signature is fluid and cursive, with the first name "Milton" and last name "Fowler" clearly distinguishable.

For the Comptroller General  
of the United States